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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,853	10/24/2001	Scott C. Harris	DIY-Internet/SCH	9828

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EXAMINER	
BARQADLE, YASIN M	

ART UNIT	PAPER NUMBER
2153	

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02/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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09/682,853

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.

EXAMINER

ART UNIT	PAPER
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Commissioner for Patents

The reply brief filed on November 22, 2006 has been entered and considered. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal.

20070125

ATTORNEY DOCKET NO. DIY-Internet/SCH
Serial No.: 09/682,853

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Scott C. Harris
Serial No.: 09/682,853
Filed : October 24, 2001
Title : WEB BASED COMMUNICATION OF INFORMATION WITH RECONFIGURABLE FORMAT

Art Unit : 2153
Examiner : Y. M. Barqadle

Board of Patent Appeals and Interferences
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Sir:

Applicant herewith files this Reply Brief, thereby responding to the new points of argument raised in the Examiner's Answer. Note that there are significant new points of argument, raised in the 23 page Examiner's Answer (substantially longer than the 14 page Final Office Action). Many of these arguments, however, go to the question of the actual standard that should be used for obviousness.

Under the law, that a reference makes obvious to that which it suggests.

A reference does not make obvious that which could have been done using the reference. That means, the fact that a reference COULD BE MODIFIED to do what is claimed, does not mean that the reference fairly suggests the claim.

While the Patent Office pays lip service to the standard, they continue to use the "what could have been done" standard, stating repeatedly that anything that things the

reference "could have done" to the reference are obvious. With all due respect, this is legally improper, and forms a rejection based on hindsight.

The fact that something could have been done in hindsight, means that it is only obvious after reading the present specification.

An example is given in the response to arguments in the Reply Brief bridging pages 11-12. In this, the Patent Office states that Chen system "can readily support new functionality with applets, new devices with devlets, and new information spaces with infolets". The remainder of the page describes in general other kinds of messages, Internet services, Internet content, user profile, and other things. The fact that Chen teaches applets and devlets certainly does not mean that Chen teaches requesting everything that could ever be done with applets and devlets. Chen could be modified to request additional information, but for reasons previously stated, Chen teaches away from requesting this kind of additional information. The Examiner cites in re Keller to support that obviousness is tested by what the combined teachings would have suggested to one of ordinary skill in the art. Applicants agree with this. Also note that obviousness requires the Examiner to show that there is either a suggestion in the art to produce the claimed invention or a compelling motivation based on sound scientific principles. Carl Schenk AG v Nortron Corp, 713 F.2d 782, 218 USPQ 698, 702 (Fed Cir 1983). That is, the Patent Office's suggested "could have been done" standard is legally incorrect.

At the top of page 13, the Examiner sums up his conclusion.: Chen CAN be modified to require additional information. Since Chen is structurally capable of providing information, the Patent Office believes that all of the teachings in Chen to the

contrary should be ignored. With all due respect, what Chen teaches is what matters here, not what Chen is physically capable of doing.

On page 16, the Examiner makes new arguments about the Steele reference. Steele does teach how to populate the fields in an advertisement. Steele's teaching that his system could be used for other things such as news updates, sports and weather is noted: however, his teaching is about providing ads to a user. The fact that Steele could be used for other things does not change that Steele's specific teaching is in an advertisement.

At the top of page 19, the Examiner states for the first time that Steele sends back a receipt or confirmation of receipt. This turns the claim language on its head. The claimed confirmation is not a "confirmation of receipt".

For these, and other reasons set forth in the main brief, the Examiner's position is legally incorrect, and should be reversed.

Please apply any charges or credits to our Deposit Account No. 50-1387.

Respectfully submitted,

Date: __11/22/06

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